

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of GLADYS MASON and U.S. POSTAL SERVICE,  
POST OFFICE, Richmond, VA

*Docket No. 99-2582; Submitted on the Record;  
Issued March 8, 2001*

---

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective October 15, 1997.

On November 15, 1993 appellant, then a 48-year-old clerk, sustained a strain to her right shoulder and back while pulling flats for a box section.<sup>1</sup> She received appropriate compensation and benefits.<sup>2</sup>

In a January 4, 1994 report, Dr. Edward R. Isaacs, a Board-certified neurologist, indicated that appellant was dropping some letters in a cart on November 15, 1993 when she felt severe pain in the right shoulder which went into her neck and then down into her back. Dr. Isaacs continued submitting treatment notes reporting appellant's status.

In a report dated March 7, 1994, Dr. Isaacs stated that it was his opinion that appellant suffered a strain to the upper back and right shoulder as well as neck strain when dropping letters into the cart. He noted that some lower back discomfort was accompanied by this, which was now appellant's major difficulty. Dr. Isaacs also indicated that he supported a diagnosis of upper back and neck strain as a consequence of that movement as well as a lower back strain.

In a report dated November 18, 1994, Dr. Isaacs stated that appellant's current disability was a "consequence of her degenerative knee disease which might be a consequence of her long years as a letter carrier, but in any case, has been a significant problem which became apparent after her March visit in 1994." He noted that a magnetic resonance imaging (MRI) scan showed osteoarthritic changes with joint effusion and a popliteal cyst and that patient had undergone surgery on both knees. Dr. Isaacs also noted that because of the relationship between the legs

---

<sup>1</sup> On April 19, 1994 the Office accepted the claim for a thoracic strain and right shoulder strain.

<sup>2</sup> The record also includes certain documents and forms pertaining to a 1987 claim for bursitis of the hip. The hip claim is not before the Board on the present appeal.

and the lumbosacral mechanics and upper back mechanics, it was impossible to restore function to a level that would reduce her pain and discomfort in the upper back, given the difficulties with the lower extremities, which has been her primary disability. He also noted that, "if it were not for her knees, he was sure she would be back on some type of light duty." Dr. Isaacs also noted that appellant was seen on November 17, 1994 and required treatment in the upper back. He noted that appellant should be able to return to some form of light duty in the near future. Dr. Isaacs also noted that the extended period of disability was a consequence of appellant's knee problems and the relationship to "workman's compensation" would need to be debated as an overuse syndrome.

Appellant submitted numerous duty status reports (Form CA-17) for the period covering February 16, 1994 through August 20, 1996. These reports, some of which were signed by Dr. Mark Ende, Board-certified in internal medicine, kept appellant on light or limited duty.

In a report dated January 2, 1996, Franklin H. Ashby, Jr., a retired occupational medicine specialist and a fitness-for-duty doctor, stated that he had reviewed the job injury chart and concluded that an independent examination by an occupational/rehabilitation specialist would be much more focused and accurate than the neurological work ups to date. Dr. Ashby noted that the diffuse and diverse symptoms, signs and diagnoses seemed to exceed the expected for simple work exertion without an accident or trauma. He also stated that, since his first observation in November 1994, there seemed to be more laboratory tests than one would expect of a neurologist. Additionally, Dr. Ashby noted that "appellant's return to work from knee pathology of a degenerative nature further weighs that much, if not all, of her varied symptoms are nonjob related except as they have been designated by the treating physician." He also noted that the claim was only accepted for thoracic and right shoulder strain. Dr. Ashby also indicated that the treating physician's initial work up did not record a tentative diagnosis.

In a report dated December 30, 1996, Dr. Lawrence Blumberg, Board-certified in orthopedic surgery and a fitness-for-duty doctor, noted that appellant was seen for injuries sustained to the cervical, right shoulder thoracic and LS regions as a result of a work-related injury on November 15, 1993. Dr. Blumberg noted that, presently, appellant continued to suffer stiffness and tightness in the right cervical and right shoulder regions. His diagnosis was musculoligamentous type sprain/strain to the right shoulder, which was resolved long ago. Dr. Blumberg also noted that the right shoulder region sprain would be from the injury of November 15, 1993 and this would be a self-limiting soft tissue injury that resolved long ago. He stated that, based upon the history and physical findings, he did not believe any problems with the patient's cervical, thoracic or LS regions are due to the injury of November 15, 1993 or to any industrial exposure. Dr. Blumberg also noted that appellant's subjective complaints far exceeded any objective physical findings and certainly were not related to her injury of November 15, 1993. He did not believe any treatment was warranted at this time. Dr. Blumberg also stated there was no reason why appellant could not perform full activities without limitation or the need for any work restriction whatsoever.

In a January 7, 1997 fitness-for-duty examination, Dr. Ashby concurred with Dr. Blumberg's evaluation and opinion.

On January 8, 1997 the Office referred appellant for a second opinion examination with Dr. Herman Nachman, Board-certified in orthopedic surgery, on January 28, 1997 at 1:30 p.m.

In a February 3, 1997 report, Dr. Nachman noted that he examined appellant on January 28, 1997. He noted that range of motion of the head, neck and upper extremity joints were normal. Dr. Nachman reported reviewing diagnostic test results and the medical evidence of record. He opined that appellant did not have any residual disability resulting from the work injury sustained on November 15, 1993 and that she had reached maximum, medical improvement. Dr. Nachman stated there was no indication for further treatment of the injury sustained on November 15, 1993 justifying imposition of the work restrictions. He also noted that appellant had degenerative arthritic changes in the dorsal and lumbar spine and both knees. Dr. Nachman noted that these conditions were not related to the work injury of November 15, 1993 but they probably contributed to her subjective complaints and diminished physical capacity. He also noted that spinal manipulation, in his opinion, was contraindicated and was a likely contributor to appellant's subjective complaints.

On July 23, 1997 the Office issued a notice of proposed termination of compensation. The Office indicated that the weight of the medical evidence, as represented by the opinion of Dr. Nachman, demonstrated that appellant's work injury had resolved. Appellant was given 30 days to submit additional evidence or argument.

In an August 7, 1997 report, Dr. Isaacs noted that appellant had a recurrent problem in her low back since November 1993 with the onset of shoulder pain and back pain. Appellant's difficulties over the years were primarily a combination of lower back and upper back pain and in particular, knee pain which was a consequence of her delivering mail, walking on concrete and developing degenerative joint disease in both knees. Dr. Isaacs asserted that appellant's current limitations at work reduced her stress to the low back and knees and reduced her recurrent difficulty. He noted that, if the restrictions were lifted, appellant would become totally disabled and require extensive knee surgery. Dr. Isaacs also noted that one of the physicians who had reviewed appellant's records was retired for over 10 years and was not in active practice. He indicated that appellant should be evaluated by Dr. John F. Meyers, Board-certified in orthopedic surgery, who had been active in appellant's care and would be able to comment on the abnormalities in both knees. Dr. Isaacs stated that "with abnormal leg function and muscle imbalance in the lower extremities and abnormal knee mechanics, it was impossible for her not to suffer recurrent low back difficulty and as a consequence of that, upper back difficulty."

By decision dated October 15, 1997, the Office finalized its proposed termination of benefits. In an accompanying memorandum, the Office indicated that Dr. Nachman's opinion remained the weight of the medical evidence.

On November 12, 1997 appellant requested an oral hearing.

In a November 18, 1997 report, Dr. Isaacs noted the history of appellant and reported her course of treatment. He stated that appellant was seen in 1989 for a low back strain associated with carrying a mailbag and delivering mail. Dr. Isaacs also noted that appellant suffered from significant leg pain due to her inability to fully recover from the back strain for the January 1994 injury. He referred appellant for an MRI scan of the knees, despite treatment for the upper and

lower back. Dr. Isaacs diagnosed degenerative changes of the lumbar spine based on a 1989 computerized tomography (CT) scan and a later MRI scan which showed disc disease affecting the low back. He also reported degenerative changes in both knees. Dr. Isaacs noted that a combination of wear and tear on these joints made her more susceptible to injury, with the bending and twisting that occurred as appellant was placing flats into a u-cart caused a decompensation of these mechanics beyond her body's ability to recover. He stated that the anatomical changes and pathological changes occurring in the low back remained a barrier to further improvement and ability to recondition her. Dr. Isaacs noted that appellant's difficulties were a combination of degenerative changes of the lumbar spine and knees, which predisposed appellant to injury. He stated that the bend and twist injury that occurred while working precipitated a cascade of further dysfunction of spinal mechanics and a process of continued pain and dysfunction for which her body was not capable of recovering due to underlying conditions. Dr. Isaacs noted that the underlying conditions were not the cause of appellant's pain but simply inhibited her from her ability to fully recover. He pointed out that Dr. Nachman's opinion was focused towards a surgical approach to a patient's problem and not to a mechanical or functional approach which would involve a nonsurgical fashion. In a report dated December 3, 1997, Dr. Isaacs corrected some transcription errors in his November 18, 1997 report.

The hearing was held on July 22, 1998.

By decision dated and finalized on September 28, 1998, the Office hearing representative found that the Office, based on Dr. Nachman's report, met its burden of proof in terminating appellant's compensation benefits on October 15, 1997. However, the hearing representative found that Dr. Isaacs' November 18, 1997 report created a medical conflict with the report of Dr. Nachman. The hearing representative remanded the case.

On January 25, 1999 the Office informed appellant that a conflict had arisen and referred appellant for an impartial medical evaluation with Dr. Kennedy Daniels, Board-certified in orthopedic surgery.<sup>3</sup>

In a February 23, 1999 report, Dr. Daniels stated that appellant's claim was accepted for right shoulder and thoracic strain and her knee conditions were not accepted as related to her work injury of November 15, 1993. He indicated that appellant stated her injuries occurred in 1987 and 1991 whereas the record reflected that appellant was injured on November 15, 1993. Dr. Daniels reviewed findings of diagnostic tests but noted that these generally revealed degenerative changes of the spine without any acute abnormality. On examination, he noted no palpable lumbar spasm. Dr. Daniels advised that straight leg raising produced back pain and bilateral leg pain. Knee flexion of 45 degrees produced low back pain during examination although, when seated on the examining table, appellant flexed her knees to 90 degrees without pain. Dr. Daniels noted appellant's course of treatment and noted that manipulations performed by Dr. Isaacs had no value or benefit. Additionally, he noted that he did not believe that manipulations themselves were necessary. Dr. Daniels stated that appellant's knee symptoms were completely unrelated to any specific injury. He also noted that appellant's spinal problems

---

<sup>3</sup> The Office initially referred appellant to Dr. Carmelino Galang, Board-certified in orthopedic surgery, but after the doctor advised the Office that he would not examine appellant unless prepayment was received in advance, the Office referred appellant to Dr. Daniels.

appeared to be degenerative in nature and “although she may have had a temporary exacerbation of her spinal arthritis by a job-related event this would not be permanent or ongoing beyond perhaps six weeks past the event in question.” Dr. Daniels also noted that the patient was magnifying her symptoms when he examined her such that the value of her subjective complaints were noticeably depreciated. He concluded that appellant could return to her full work activity without restriction approximately six weeks beyond the work incident.

In a June 29, 1999 decision, the Office issued a decision finding that the weight of the medical evidence established that appellant had no work-related condition or disability after October 15, 1997 causally related to her work injury of November 15, 1993.

The Board finds that the Office met its burden of proof to terminate appellant’s compensation benefits effective October 15, 1997.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.<sup>4</sup> After it has determined that there is disability causally related to an employee’s federal employment, the Office may not terminate or modify the compensation without establishing that the disabling condition has ceased or that it is no longer related to the employment.<sup>5</sup>

In this case, the Office terminated appellant’s compensation benefits for temporary total disability effective October 15, 1997 based upon the report of Dr. Nachman. The Board finds that Dr. Nachman’s February 3, 1997 report, at the time the Office terminated compensation, represented the weight of the medical evidence and was a sufficient basis on which to terminate appellant’s benefits. Dr. Nachman noted examining appellant and found that ranges of motion of the head, neck and upper extremity joints were essentially normal and that appellant did not have any residual disability resulting from the work injury of November 15, 1993 and that she had reached maximum medical improvement. He also noted that appellant had degenerative arthritic changes in the dorsal and lumbar spine and both knees which were not related to the work injury of November 15, 1993.

The record contained the March 7 and November 18, 1994 reports of appellant’s treating physician, Dr. Isaacs, who supported a diagnosis of upper back and neck strain as well as lower back strain. He also noted that appellant’s current disability was a “consequence of her degenerative knee disease which might be a consequence of her long years as a letter carrier.” The Board has held that an opinion, which is speculative in nature has limited probative value in determining the issue of causal relationship.<sup>6</sup> Appellant also submitted several duty status reports placing her on light duty for the period of February 16, 1994 to August 20, 1996. However, none of these reports contained any rationale explaining how appellant’s current disability was causally related to her employment injury. They are of limited probative value on the relevant issue of the present case in that they do not contain a clear opinion that appellant had

---

<sup>4</sup> *Bettye F. Wade*, 37 ECAB 556 (1986); *Ella M. Garner*, 36 ECAB 238 (1984).

<sup>5</sup> *John Wilkes, Jr.*, 36 ECAB 451 (1985); *Betty J. Glover*, 34 ECAB 465 (1982); *Fred Foster*, 1 ECAB 21 (1947).

<sup>6</sup> *Arthur P. Vliet*, 31 ECAB 366 (1979).

continuing disability due to her November 15, 1993 employment injury.<sup>7</sup> In an August 7, 1997 report, Dr. Isaacs noted that appellant's difficulties over the years were primarily a combination of shoulder and back pain and in particular, knee pain, which was a consequence of delivering mail, walking on concrete and developing degenerative joint disease in both knees. He noted that if restrictions were lifted, appellant would become totally disabled.<sup>8</sup> Dr. Isaacs also stated that appellant had abnormal leg function and muscle imbalance in the lower extremities and abnormal knee mechanics and it was impossible for appellant not to suffer recurrent low back difficulty. However, this report was of limited probative value on the relevant issue of the present case, as it did not contain adequate medical rationale in support of his conclusion of causal relationship.<sup>9</sup> For example, he did not explain how the difficulties were related to the employment injury as opposed to the abnormal function and imbalance in the lower extremities and degenerative joint disease or why they were not related to appellant's injury in 1987 involving the knees.

Consequently, the Board finds that the Office met its burden of proof at the time that it terminated benefits on October 15, 1997.

After termination or modification of benefits clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish, by the weight of the reliable, probative and substantial evidence that she had an employment-related disability, which continued after termination of compensation benefits.<sup>10</sup>

Subsequent to the proper termination on October 15, 1997, appellant submitted the November 18, 1997 report of Dr. Isaacs, who provided a rationalized opinion regarding how appellant's condition remained employment related. The Office properly found that this created a conflict in the medical evidence with the opinion of Dr. Nachman and referred appellant to Dr. Daniels to resolve the conflict.<sup>11</sup>

---

<sup>7</sup> See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence, which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

<sup>8</sup> Disability compensation is payable only for an employment injury which causes disability for work; fear of a recurrence of disability if the employee returns to work is not a basis for compensation. *William A. Kandel*, 43 ECAB 1011 (1991); see *Mary A. Geary*, 43 ECAB 300 (1991).

<sup>9</sup> See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

<sup>10</sup> *Talmadge Miller*, 47 ECAB 673 (1996).

<sup>11</sup> 5 U.S.C. § 8123(a), in pertinent part provides: "If there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."

Where there exists a conflict of medical opinion and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, is entitled to special weight.<sup>12</sup>

In his February 23, 1999 report, Dr. Daniels noted appellant's history of treatment and reported her course of treatment. He noted inconsistencies regarding dates of injuries, reviewed findings of diagnostic tests and specifically noted that appellant's knee conditions were not an accepted part of the injury and that appellant had leg pain from a 1987 injury. Dr. Daniels noted that appellant appeared to be magnifying her symptoms when he performed an examination of her knees and legs such that her subjective complaints were noticeably depreciated. He noted that the MRI scan findings revealed no significant herniation or nerve root compression and they also revealed that appellant had degenerative changes without any acute abnormality. Dr. Daniels noted that appellant's spinal problems appeared to be degenerative in nature and "although she may have had a temporary exacerbation of her spinal arthritis by a job-related event, this would not be permanent or ongoing beyond perhaps six weeks past the event in question." He indicated that appellant could return to full work activity approximately six weeks beyond the work incident. The Board finds that Dr. Daniels' report is based on a proper factual background and sufficiently well rationalized such that it is entitled to special weight and establishes that appellant had no disability or condition causally related to her November 15, 1993 employment injury after October 15, 1997.

For these reasons, the Office properly found that appellant has no continuing condition or disability causally related to her November 15, 1993 employment injury after October 15, 1997.

The decision of the Office of Workers' Compensation Programs dated June 29, 1999 is affirmed.

Dated, Washington, DC  
March 8, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member

---

<sup>12</sup> *Aubrey Belnavis*, 37 ECAB 206 (1985).